BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref. No. EAD/SS-VS/7/2018-19]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In the matter of
Mr. Raju Rajak, Sub-Broker

1. Mr. Raju Rajak, trade name –"Raju Rajak" (hereinafter referred to as the 'Noticee'), is a sub broker registered with SEBI with registration numbers INS018062815 and INS238050012 and affiliated to M/s. Angel Broking Private Limited (hereinafter referred to as the 'Angel').

2. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had conducted inspection of the Noticee on September 05, 2013. The inspection period was from April 2012 to March 2013. The scope of the inspection was to verify as to whether the sub broker is dealing on behalf of clients and handling funds & securities of clients. SEBI, vide letter dated December 30, 2013 had sought comments from the Noticee on the observations and findings of the inspection. The copy of the inspection report was also furnished to the Noticee alongwith the said letter. The Noticee vide its reply dated January 13, 2014 submitted his comments on the observations and findings of the inspection.

3. Observation during the inspection and corresponding reply of Noticee are as follows:
   a) That, the Noticee has bought shares from the market through Angel and transferred the same number of shares in off-market mode to two clients as described in the following table:

Sr. No.	Date of Transaction	Name of the scrip	Qty.	Bought from	Sold To
1	9-Mar-13	Reliance Industry	15	Angel	
	14-Mar-13	Reliance Industry	15		Sivagamy Dilip Bhandari
Value of the trade (in Rupees)				**12,720.00**	**12,770.00**
2	17-Jul-12	Satyam Computers	3,500	Angel	
	18-Jul-12	Satyam Computers	3,500		Milind Lokare
Value of the trade (in Rupees)				**2,79,475.00**	**2,81,925.00**

Further, the Noticee had received the following shares in off-market mode from the following three clients:

Sr. No.	Date of Transaction	Name of the scrip	Qty.	Bought from	Approximate value of the trade (in Rupees)
1	11-Apr-12	Satyam Computers	4,315	Rajendra Sonawane	3,44,552.75
2	27-Nov-12	Sesa Goa	12,500	Sushil Kumar Omprakash Agarwal	21,53,500.00
3	27-Nov-12	Sesa Goa	12,500	Renu Sushil Agarwal	21,53,500.00
				Value (in Rupees)	**46,51,552.75**

The Noticee vide its reply dated January 13, 2014 submitted that, all the alleged transactions were for the loan purpose. The Noticee in his statement dated June 03, 2014 had stated that the shares received from aforesaid three persons namely Mr. Rajendra Sonawane, Mr. Sushil Kumar Omprakash Agarwal and Ms. Renu Sushil Agarwal were loans for margin obligations. The evidence i.e. the letters of the clients of the Noticees as relied upon by him showed that he was paying 1.5% per month on the value of the shares to Mr. Rajendra Sonawane and Rs. 5 per share per month each to Mr. Sushil Kumar Omprakash Agarwal and Ms. Renu Sushil Agarwal. However, the Noticee had failed to furnish details of the interest payment to these clients when the same was asked by the concerned department. Therefore, it has been alleged that the Noticee had bought shares from these clients instead of asking them to place sell order through Angel and has directly dealt on behalf of them and handled there securities.

b) That during the financial year 2012-13 the Noticee had directly dealt with a client (Mr. Narendra Sanghvi) without placing buy / sell order through affiliated stock broker and also did not execute the Know Your Client Agreement (KYC) with this client. The details of such transactions are as under:

Sr. No.	Date of Prescription	Name of the Scrip	Qty.	Bought From	Sold to	Approximate value of the Trades (in Rupees)
1	6-Feb-13	Alstom India Ltd.	28	Angel		10,084.48
	9-Feb-13	Alstom India Ltd.	28		Narendra Sanghvi	10,105.20
2	16-Jan-13	BHEL	125	Angel		28,351.25
	18-Jan-13	BHEL	125		Narendra Sanghvi	28,625.00
3	16-Jan-13	Goldman Sac Gold Exc	1	Angel		2,913.64
	18-Jan-13	Goldman Sac Gold Exc	1		Narendra Sanghvi	2904.98
4	6-Feb-13	India Bulls	88	Angel		6,900.96
	9-Feb-13	India Bulls	88		Narendra Sanghvi	6688.00

Sr. No.	Date of Prescription	Name of the Scrip	Qty.	Bought From	Sold to	Approximate value of the Trades (in Rupees)
5	6-Feb-13	L&T Ltd.	28	Angel		42,727.72
	9-Feb-13	L&T Ltd.	28		Narendra Sanghvi	42 700.00
6	11-Mar-13	L&T Ltd.	50	Angel		75,750.00
	14-Mar-13	L&T Ltd.	25		Narendra Sanghvi	38,281.25
7	16-Jan-13	RIL	28	Angel		24,360.00
	18-Jan-13	RIL	28		Narendra Sanghvi	25,275.60
8	11-Mar-13	RIL	45	Angel		38,731.50
	14-Mar-13	RIL	45		Narendra Sanghvi	38,841.75
9	16-Jan-13	Reliance Infrastructure	6	Angel		5,220.00
	18-Jan-13	Infrastructure	6		Narendra Sanghvi	5,416.20
					Total	**4,33,877.53**

In his reply dated January 13, 2014 the Noticee submitted that said Mr. Narendra Sanghvi was never his client and he was direct client of Angel. He was a very close family friend of the Noticee and that the shares were given to him as loan. However, Angel has confirmed that said Mr. Narendra Sanghvi has closed his trading account way back in May 2011 and that the Noticee was dealing with him in personal capacity and not through Angel. Later, in his statement dated June 03, 2014 the Noticee accepted the alleged transactions with Mr. Narendra Sanghvi and expresses 'sorry' for the same and undertook that such mistake will never happen next time.

4. On analysis of the comments of the Noticee, the concerned Department of SEBI did not find the response of the Noticee acceptable. Upon consideration of the material on record, the Whole Time Member, SEBI was satisfied that there are sufficient ground to adjudicate upon the alleged violations by the Noticee in respect of the provisions of point 11 (Transaction and Settlement) of Annexure-6 containing guidance note detailing "Do's and Don'ts for trading on exchanges" as specified in clause of 3(v) of the SEBI Circular No. SEBI/MIRSD/16/2011 dated August 22, 2011 and clauses A(1) and A(2) of the Code of Conduct for sub-brokers as specified under schedule II read with Regulation 15(1)(b) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as 'Stock Brokers Regulations') and appointed Mr. Jayanta Jash, Chief General Manager, as Adjudicating Officer vide order dated October 28, 2014 to adjudge under section 15HB of the SEBI Act read with regulation 26 (xv) and (xvi) of the Stock Brokers Regulations for the alleged violations by the Noticee.

5. Subsequently, vide an order dated June 22, 2015 Mr. Suresh Gupta, Chief General Manager, appointed as Adjudicating Officer to adjudge the aforesaid alleged violations by the Noticee and the same was communicated to him, vide communication dated May 5, 2016. Thereafter, the said Adjudicating Officer had remitted back the matter to concerned department in SEBI for clarification. After such clarification, vide communication dated April 02, 2018 this case has been transferred to me. It has been advised, vide the said communication, that except for the change of the Adjudicating Officer the other terms and condition of the original orders (whereby the aforesaid Adjudicating Officers were appointed) 'shall remain unchanged and shall be in full force and effect'. It has been advised that I should proceed in accordance with the "*terms of reference made in the original orders read with this order*" (i.e. communication-order dated April 02, 2018).

6. Accordingly, in terms of rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudication Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules") read with section 15I of the SEBI Act and terms of reference as advised in above communication dated April 02, 2018 the notice no. EAD/SS/VS/11278/2018 dated April 11, 2018 (hereinafter referred to as 'SCN') was issued to the Noticee, calling upon it to show cause as to why an inquiry should not be held against it in terms of rule 4 of the Adjudication Rules and penalty be not imposed upon him under 15HB of the SEBI Act and regulations 26(xv) and (xvi) of the Stock Brokers Regulations for the aforesaid violations.

7. The provisions of point 11 (Transaction and Settlement) of Annexure-6 containing guidance note detailing "Do's and Don'ts for trading on exchanges" as specified in clause of 3(v) of the SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011 and clauses A(1) and A(2) of the Code of Conduct for sub-brokers as specified under schedule II read with Regulation 15(1)(b) of the Stock Brokers Regulations charged in this case and possible consequence therefor provided in SEBI Act are reproduced hereinafter:

SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011

3. *SEBI has devised the uniform documentation to be followed by all the stock brokers / trading members; a copy thereof to be provided by them to the clients. The details of such documents are listed below:*
v. *Guidance Note detailing Do's and Don'ts for trading on exchanges –Annexure-6*

Annexure-6

11. Make the payments by account payee cheque in favour of the stock broker. Don't issue cheques in the name of sub-broker. Ensure that you have a documentary proof of your payment/deposit of securities with the stock broker, stating date, scrip, quantity, towards which bank/ demat account such money or securities deposited and from which bank/ demat account.

Stock Brokers Regulations:

General obligations and inspection.
Regulation 15 (1) (b). *The sub-broker shall abide by the Code of Conduct as specified in Schedule II.*

SCHEDULE II
CODE OF CONDUCT FOR SUB BROKERS
[Regulation 15]

A. General.
(1) *Integrity: A sub-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all investment business.*
(2) *Exercise of due Skill and Care: A sub-broker, shall act with due skill, care and diligence in the conduct of all investment business.*

Liability for monetary penalty.

26. *A stock broker or a sub-broker shall be liable for monetary penalty in respect of the following violations, namely-*

(i)…

(xiv)….

(xv) *Failure to comply with directions issued by the Board under the Act or the regulations framed thereunder.*

(xvi) *Failure to exercise due skill, care and diligence.*

8. The SCN was sent at the last known address of the Noticee through Speed Post Acknowledgment Due, which was, however, returned undelivered. Therefore, in terms of Rule 7(c) of Adjudication Rules, the SCN was affixed at the last known address of the Noticee. In the said SCN, the Noticee was asked to reply within a period of 14 days. However, no reply was received from the Noticee. Further, in the interest of natural justice and in terms of rule 4(3) of the Adjudication Rules, the Noticee was granted an opportunity of personal hearing on May 21, 20018 vide notice dated May 07, 2018. The notice of hearing was duly served upon the Noticee on May 08, 2018 by way of affixture. However, till date, no reply / communication has been received from the Noticee. Vide the said SCN/notice of hearing, it was clearly indicated that in case of failure to submit reply or to appear for the hearing, the case would be proceeded with *ex-parte* on the basis of the material available on record.

9. It is noted that the Noticee has neither filed any reply nor has availed the opportunity of personal hearing despite service of notices upon him. In the facts and circumstances of this case, I am of the view that the Noticees has nothing to submit and in terms of rule 4(7) of the Adjudication Rules the matter can be proceeded *ex-parte* on the basis of material available on record. In absence of any response from the Noticee to the SCN, I presume that the Noticee has admitted the charges levelled against him. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal in

the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) has, *inter alia*, observed that, *"……the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them"*. Further, the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has also, *inter alia*, and observed that: *"…… appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."*.

10. I have considered the allegation levelled in the terms of reference and the relevant material brought on record. In this case, in absence of any response from the Noticee and any material suggesting contrary to the charges/allegation the only possible conclusion is that the allegations and charges have been admitted by the Noticee.

11. I, however, am of the view that it would be unfair to hold the Noticee guilty of violation of provisions of circulars and regulations charged in this case without examining the applicability thereof to the default of the Noticee. On bare perusal of point 11 (Transaction and Settlement) of Annexure-6 containing guidance note detailing "Do's and Don'ts for trading on exchanges" as specified in clause of 3(v) of the SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011, it is noted that under this clause guidance have been issued to investors to make payment by account pay cheque in favour of the stock broker, not to issue cheques in the name of sub-broker; etc. This does create any direct obligation of the sub-brokers instead provides guidance to the investors. In fact, such obligation of sub-broker as alleged in this case flows from the definition of sub-broker given in regulation 2(1) (gc) of the Stock Broker Regulations and the requirements laid down in the Tripartite Agreement specified vide circular dated September 23, 2013. Regulation 2(1)(gc) of Stock Brokers Regulation defines that *"sub –broker means any person not being a member of a stock exchange who acts on behalf of a stock broker as agent or otherwise for assisting an investors in buying , selling or dealing in securities through such stock broker.* Further, after amendment in Stock Brokers Regulations by SEBI (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2003 dated September 23, 2003 the role of sub-broker and the main broker was clarified and a Model Tripartite Agreement was prescribed by circular No. SEBI/MIRSD/DOPS/CIR-44/2004 dated August 26, 2004 thereby the role of sub-broker has been clearly provided. The Noticee has not been charged with regard violation of this circular. It is settled position that all allegation and charges should be specific and applicable provisions creating obligation of the Noticee must be clearly alleged. In this case, this has not been

done. I, therefore, do not hold Noticee to be in default of complying with the guidance note given in Annexure-6 of the SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011.

12. Be whatever it may, it is admitted position that and as found during its inspection, the Noticee had bought shares from the clients instead of asking them to place sell order through its stock broker and has directly dealt on behalf of them and handled there securities. Further, the Noticee directly dealt with Mr. Narendra Sanghvi without placing buy / sell order through Angel i.e. its stock broker and also did not execute the KYC with this client. In this regard, it is relevant to mention that sub-brokers are not expected to directly deal in securities of clients and all buy /sell orders of the clients have to be placed only through a registered stock broker as required under Stock Brokers Regulations and circulars dated August 26, 2004. In terms of Regulation 12A of the Stock Brokers Regulations the conditions subject to which the certificate of registration is granted to a sub-broker includes – that he is authorized by the concerned stock broker and that he abides by the code of conduct specified for him. In this case, the Noticee has, by its aforesaid defaults, failed to abide by the clauses A(1) and A(2) of the Code of Conduct for sub-brokers as specified under schedule II read with Regulation 15(1)(b) of the Stock Brokers Regulations and the same could be adjudicated under section 15HB of SEBI Act which provides as follows:

Penalty for contravention where no separate penalty has been provided.
15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

13. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the Act, 1992 which reads as under:-

15J - Factors to be taken into account by the adjudicating officer
While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default."

Explanation.—*For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section;*

14. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. The only charge that is established against the Noticee is the violation of the code of

conduct and there is no allegation or no material on record suggesting any acts and omissions on the part of the Notcee that it had any fraudulent or manipulative conduct or purpose. Considering the defaults as found during inspection and taking into account the facts and circumstances of the case as dealt with hereinabove, I, exercise of the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, hereby impose the minimum monetary penalty of Rs.1,00,000/- (Rupees One Lac only) as prescribed under section 15HB on the Noticee viz. Raju Rajak. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

15. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

16. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA-II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052." And also to e-mail id :- tad@sebi.gov.in

1	Case Name	
2	Name of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

17. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: June 13, 2018
Place: Mumbai

Santosh Shukla
Chief General Manager &
Adjudicating Officer